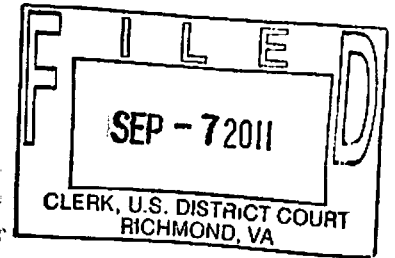


**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**



**JAMES H. McBRIDE,**

Petitioner,

v.

Civil Action No. **3:11CV83**

**COMMONWEALTH OF VIRGINIA,**

Respondent.

**MEMORANDUM OPINION**

Petitioner, a Virginia inmate, submitted this action which he styled a "Motion for Appointment of Counsel to Advise and Assi[s]t in a Petition for Writ of Habeas Corpus." By Memorandum Order entered on July 18, 2011, the Court construed Petitioner's submission to be a petition for a writ of habeas corpus under 28 U.S.C. § 2254. The Court directed Petitioner to complete and return the standardized forms for filing a 28 U.S.C. § 2254 petition. The Court warned Petitioner if he did not complete and return the forms to the Court within eleven (11) days of the date of entry thereof, the Court would dismiss the action for failure to comply with Rule 2(d) of the Rules Governing Section 2254 Cases. *See* Rules Governing Section 2254 Cases in the United States District Courts Rule 2(d) ("The petition must substantially follow either the form appended to these rules or a form prescribed by a local district-court rule."). More than eleven (11) days have elapsed since the entry of the July 18, 2011 Memorandum Order and Petitioner has not responded with the appropriate forms. Accordingly, the action will be **DISMISSED WITHOUT PREJUDICE.**

An appeal may not be taken from the final order in a § 2254 proceeding unless a judge issues a certificate of appealability (“COA”). 28 U.S.C. § 2253(c)(1)(A). A COA will not issue unless a prisoner makes “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). This requirement is satisfied only when “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)). No law or evidence suggests that McBride is entitled to further consideration in this matter. A certificate of appealability will be DENIED.

It is so ORDERED.

Date: 9-6-11  
Richmond, Virginia

<u>/s/</u> James R. Spencer Chief United States District Judge
--